**[BILLING CODE: 1410-30P]**

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 201**

**[Docket No. RM 2002-4]**

**Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

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**SUMMARY:** The Copyright Office of the Library of Congress is preparing to conduct proceedings mandated by the Digital Millennium Copyright Act, which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit evidence on whether noninfringing uses of certain classes of works are, or are likely to be, adversely affected by this prohibition on the circumvention of measures that control access to copyrighted works.

**DATES:** Written comments are due by December 18, 2002. Reply comments are due by February 19, 2003.

**ADDRESSES:** Electronic Internet submissions must be made through the Copyright Office website: http://www.copyright.gov/1201/comment_forms; *See* section 3 of the SUPPLEMENTARY INFORMATION section for file formats and other information about electronic and non-electronic filing requirements. If delivered by hand, comments should be delivered to the Office of the General Counsel, Copyright Office, LM-403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC. If delivered by means of the United States Postal Service (*see* section 3 of the SUPPLEMENTARY INFORMATION about continuing mail delays), comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024-0400. See SUPPLEMENTARY INFORMATION section for information about requirements and formats of submissions.

**FOR FURTHER INFORMATION CONTACT:** Rob Kasunic, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024-0400. Telephone (202) 707-8380; telefax (202) 707-8366.

**SUPPLEMENTARY INFORMATION:**

**1. Mandate for Rulemaking Proceeding**

On October 28, 1998, President Clinton signed into law the Digital Millennium Copyright Act, Pub. L. 105-304 (1998). Section 103 (subtitled "Copyright Protection Systems and Copyright Management Information") of Title I of the Act added a new Chapter 12 to title 17 United States Code, which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works. Specifically, subsection 1201(a)(1)(A) provides, inter alia, that "No person shall circumvent a technological

measure that effectively controls access to a work protected under this title." Subparagraph (B) limits this prohibition. It provides that prohibition against circumvention "shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title" as determined in this rulemaking. This prohibition on circumvention became effective two years after the date of enactment, on October 28, 2000.

At the end of the 2-year period between the enactment and effective date of the provision, the Librarian of Congress made an initial determination as to classes of works to be exempted from the prohibition for the first triennial period. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 FR 64556, 64574 (2000) (hereinafter Final Reg.). This determination was made upon the recommendation of the Register of Copyrights following an extensive rulemaking proceeding. The exemptions promulgated by the Librarian in the first rulemaking will remain in effect until October 28, 2003. At that point, the exemptions created in the first anticircumvention rulemaking will expire and any exemptions promulgated in this second anticircumvention rulemaking will take effect for a new 3-year period.

**2. Background**

Title I of the Digital Millennium Copyright Act was, inter alia, the congressional fulfillment of obligations of the United States under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. For additional information on the historical background and the legislative history of Title I, *See* Exemption to Prohibition on Circumvention of Copyright

Protection Systems for Access Control Technologies, 64 FR 66139, 66140 (1999) (http://www.loc.gov/copyright/fedreg/1999/64fr66139.html).

Section 1201 of title 17 of the United States Code prohibits two general types of activity: (1) the conduct of "circumvention" of technological protection measures that control access and (2) trafficking in any technology, product, service, device, component, or part thereof that protects either access to a copyrighted work or that protects the "rights of the copyright owner," if that device or service meets one of three conditions. The first type of activity, the conduct of circumvention, is prohibited in section 1201(a)(1). The latter activities, trafficking in devices or services that circumvent (1) access or (2) the rights of the copyright owner are contained in sections 1201(a)(2) and 1201(b) respectively. In addition to these prohibitions, section 1201 also includes a series of section-specific limitations and exemptions to the prohibitions of section 1201.

**The Anticircumvention Provision At Issue**

Subsection 1201(a)(1) applies when a person who is not authorized by the copyright owner to gain access to a work does so by circumventing a technological measure put in place by the copyright owner to control access to the work. *See* the Report of the House Committee on Commerce on the Digital Millennium Copyright Act of 1998, H.R. Rep. No. 105-551, pt. 2, at 36 (1998) (hereinafter Commerce Comm. Report).

That section provides that "No person shall circumvent a technological measure that effectively controls access to a work protected under this title." 17 U.S.C. 1201(a)(1)(A) (1998). The relevant terms are defined:

(3) As used in this subsection–

(A) to "circumvent a technological measure" means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

(B) a technological measure "effectively controls access to a work" if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

17 U.S.C. 1201(a)(3).

**Scope of the Rulemaking**

The statutory focus of this rulemaking is limited to one subsection of section 1201: the prohibition on the conduct of circumvention of technological measures that control access to copyrighted works. 17 U.S.C. 1201(a)(1)(C). The Librarian has no authority to limit either of the anti-trafficking provisions contained in subsections 1201(a)(2) or 1201(b). This narrow focus was the subject of a great deal of confusion during the first rulemaking and, therefore, demands some clarification.

This rulemaking addresses only the prohibition on the conduct of circumventing measures that control "access" to copyrighted works, e.g., decryption or hacking of access controls such as passwords or serial numbers. The structure of section 1201 is such that there exists no comparable prohibition on the conduct of circumventing technological measures that protect the "rights of the copyright owner," e.g., the section 106 rights to reproduce, adapt, distribute, publicly perform, or publicly display a work. Circumventing a technological measure that protects these section 106 rights of the copyright owner is governed not by section 1201, but rather by the traditional copyright rights and the applicable limitations in the Copyright Act. For example, if a person circumvents a measure that prohibits printing or saving an electronic copy of an article,

there is no provision in section 1201 that precludes this activity. Instead, it would be actionable as copyright infringement of the section 106 right of reproduction unless an applicable limitation applied, e.g., fair use. The trafficking in, inter alia, any device or service that allowed others to circumvent such a technological protection measure may, however, be actionable under section 1201(b).

Since section 1201 contains no prohibition on the circumvention of technological measures that protect the "rights of the copyright owner," sometimes referred to as "use" or "copy" control measures, any effect these measures may have on noninfringing uses would not be attributable to a section 1201 prohibition. Since there is a prohibition on the act of circumventing a technological measure that controls access to a work, and since traditional Copyright Act limitations are not defenses to the act of circumventing a technological measure that controls access, Congress chose to create the current rulemaking proceeding as a "fail-safe mechanism" to monitor the effect of the anticircumvention provision in 1201(a)(1)(A). Commerce Comm. Report, at 36. This anticircumvention rulemaking is authorized to monitor the effect of the prohibition on "access" circumvention on noninfringing uses of copyrighted works. In this triennial rulemaking proceeding, effects on noninfringing uses that are unrelated to section 1201(a)(1)(A) may not be considered. *See* 1201(a)(1)(C).

**Burden of Proof**

In the last rulemaking, the Register concluded from the language of the statute and the legislative history that a determination to exempt a class of works from the prohibition on circumvention must be based on a showing that the prohibition has a substantial adverse effect on noninfringing uses of a particular class of works. It was determined that proponents of an

exemption bear the burden of proof that an exemption is warranted for a particular class of works and that the prohibition is presumed to apply to all classes of works unless an adverse impact has been shown. *See* Commerce Comm. Report, at 37; *see also* Final Reg., 65 FR 64556, 64558.

In order to meet the burden of proof, proponents of an exemption must provide evidence either that actual harm exists or that it is "likely" to occur in the ensuing 3-year period. Actual instances of verifiable problems occurring in the marketplace are necessary to satisfy the burden with respect to actual harm and a compelling case will be based on first-hand knowledge of such problems. While "likely" adverse effects will also be examined in this rulemaking, this standard requires proof that adverse effects are more likely than not to occur and cannot be based on speculation alone. The House Manager's Report stated that an exemption based on "likely" future adverse impacts during the applicable period should only be made "in extraordinary circumstances in which the evidence of likelihood is highly specific, strong and persuasive." Staff of the House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as passed by the United States House of Representatives on August 4, 1998 (hereinafter House Manager's Report) at 6. While such a statement could be interpreted as raising the burden beyond a standard of a preponderance of the evidence, the statutory language enacted – "whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition" – does not specify a standard beyond more likely than not. Nevertheless, as the Register's final recommendation explained, the expectation of "distinct, verifiable and measurable impacts" in the legislative history as to actual harm suggests that conjecture alone would be insufficient to support a finding of "likely" adverse effect. Final Reg., 65 FR 64556, 64559. A showing of "likely" adverse impact will necessarily involve prediction,

but the burden of proving that the expected adverse effect is more likely than other possible outcomes is on the proponent of the exemption.

The identification of a specific problem and the meeting of a burden of proof as to a problem is not, however, the end of the analysis. For an exemption to be warranted in a particular class of works, a proponent must show that such problems are or are likely to become of such significance that they would constitute a substantial adverse effect. De minimis or isolated problems would be insufficient to warrant an exemption for a class of works. Similarly, mere inconveniences to noninfringing uses or theoretical critiques of Section 1201 would not satisfy the requisite showing. House Manager's Report, at 6. There is a presumption that the prohibition will apply to any and all classes of works, including those as to which an exemption of applicability was previously in effect, unless a new showing is made that an exemption is warranted. Final Reg., 65 FR 64556, 64558. Exemptions are reviewed *de novo* and prior exemptions will expire unless the case is made in the rulemaking proceeding that the prohibition has or will more likely than not have an adverse effect on noninfringing uses. A prior argument that resulted in an exemption may be less persuasive within the context of the marketplace in the next 3-year period. Similarly, proposals that were not found to warrant an exemption in the last rulemaking could find factual support in the present rulemaking.

**Availability of Works in Unprotected Formats**

Other factors must also be balanced with any adverse effects attributable to the prohibition on circumvention of technological protection measures that protect access to copyrighted works. In making her recommendation to the Librarian, the Register is instructed to consider the availability for use of copyrighted works. 17 U.S.C. 1201(a)(1)(C)(i). The Register must also

consider whether works protected by technological measures that control access are also available in the marketplace in formats that are unprotected. The fact that a work is available in a format without technological protection measures would allow the public to make noninfringing uses of the work even if that is not the preferred or optimal format for use. For example, in the last rulemaking, although many users claimed that the technological measures on motion pictures contained on Digital Versatile Disks (DVDs) restricted noninfringing uses of works, a balancing consideration was that the vast majority of these works were also available in analog format on VHS tapes. Final Reg., 65 FR 64554, 64568. Such availability is a factor to consider in assessing the need for an exemption to the prohibition on circumvention.

Another consideration relating to the availability for use of copyrighted works is whether the measure supports a model that is likely to benefit the public. For example, while a measure may limit the length of time of access to a work or may limit access to only a portion of work, those limitations may benefit the public by providing "use-facilitating" models that will allow users to obtain access to works at a lower cost than they would otherwise be able to obtain were such restrictions not in place. Similarly, if there is compelling evidence that particular classes of works would not be offered at all without the protection afforded by technological protection measures that control access, this use-facilitating factor must be considered. House Manager's Report, at 6. Accord: Final Reg., 65 FR 64556, 64559.

**The Scope of the Term "Class of Works"**

Section 1201 does not define a critical term for the rulemaking process: "class of works." In the first rulemaking, the Register elicited views on the scope and meaning of this term. After review of the statutory language, the legislative history and the extensive record in the

proceeding,[1] the Register reached certain conclusions on the scope of this term. For a more detailed discussion, *see* Final Reg., 65 FR 64556, 64559.

The Register found that the statutory language required that the Librarian identify a "class of works" primarily based upon attributes of the works themselves, and not by reference to some external criteria such as the intended use or the users of the works. The phrase "class of works" connotes that the shared, common attributes of the "class" relate to the nature of authorship in the "works." Thus a "class of works" was intended to be a "narrow and focused subset of the the broad categories of works of authorship *** identified in section 102." Commerce Comm. Report, at 38. The starting point for a proposed exemption of a particular class of works must be the section 102 categories of authorship: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

This determination is supported by the House Manager's Report which discussed the importance of appropriately defining the proper scope of the exemption. House Manager's Report, at 7. The legislative history stated that it would be highly unlikely for all literary works to be adversely affected by the prohibition and therefore, determining an appropriate subcategory of the works in this category would be the goal of the rulemaking. Id.

Therefore, the Register concluded that the starting point for identifying a particular "class of works" to be exempted must be one of the section 102 categories. Final Reg., 65 FR 64559-64561. From that starting point, it is likely that the scope or boundaries of a particular class

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[1] *See* Final Reg., 65 FR 64556, 64557 for a description of the record in the last rulemaking proceeding.

would need to be further limited to remedy the particular harm to noninfringing uses identified in the rulemaking.

In the first anticircumvention rulemaking, the Register recommended and the Librarian agreed that two classes of works should be exempted:

1) Compilations consisting of lists of websites blocked by filtering software applications; and

2) Literary works, including computer programs and databases, protected by access control mechanisms that fail to permit access because of malfunction, damage or obsoleteness.

While the first class exempted fits comfortably within the approach to classification discussed above, the second class includes the entire category of literary works, but narrows the exemption by reference to attributes of the technological measures that controls access to the works. The Register found that this second class probably reached the outer limits of a permissible definition of "class" under the approach adopted in the first rulemaking.

Commenters should familiarize themselves with the Register's recommendation in the first rulemaking, since many of these issues which were unsettled at the start of that rulemaking have been addressed in the final decision. Since the bases of those determinations were the statute and the legislative history relevant to these issues, and since Congress has not provided any additional guidance to the Register or the Librarian since that rulemaking's conclusion, interested parties should presume that these determinations will be applied to the evidence submitted during this second anticircumvention rulemaking as well. Of course, commenters may argue for adoption of alternative approaches, but a persuasive case will have to be made to warrant reconsideration of decisions regarding interpretation of section 1201.

The exemptions that were published for the first 3-year period of the effective date of section 1201(a)(1)(A) are temporary and will expire on the last day of such 3-year period, October 27, 2003. This rulemaking will examine adverse effects in the current marketplace and in the next 3-year period to determine whether any exemptions to the prohibition on circumvention of technological protection measures that effectively control access to copyrighted works are warranted by the evidence raised during this rulemaking.

This notice requests written comments from all interested parties. In addition to the necessary showing discussed above, in order to make a *prima facie* case for a proposed exemption, certain critical points must be established. First, a proponent must identify the technological measure that is the ultimate source of the alleged problem, and the technological measure must effectively control access to a copyrighted work. Second, a proponent must specifically explain what noninfringing activity the prohibition on circumvention is preventing. Third, a proponent must establish that the prevented activity is, in fact, a noninfringing use under current law. The nature of the Librarian's inquiry is further delineated by the statutory areas to be examined:

(i) the availability for use of copyrighted works;

(ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;

(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

(v) such other factors as the Librarian considers appropriate.

17 U.S.C. 1201(a)(1)(C).

These statutory considerations require examination and careful balancing. The harm identified by a proponent of an exemption must be balanced with the harm that would result from an exemption. In some circumstances, an exemption could have a greater adverse effect on the public than would the adverse effects identified. The ultimate determination of the Librarian must take all of these factors into consideration.

Proponents and opponents of exemptions should address each of these statutory factors. Because the statute invites the Librarian to take into account "such other factors as the Librarian considers appropriate," commenters are invited to identify any such factors, explain why any factors identified should be considered, and discuss how such factors would affect the analysis relating to any proposed class of works that the commenters are addressing.

For the entire record of the first anticircumvention rulemaking, including all comments, testimony and notices published, See the Copyright Office's website at: http://www.loc.gov/copyright/1201/anticirc.html.

**3. Written Comments**

In the last rulemaking the Register determined that the burden of proof is on the proponent of an exemption to come forward with evidence supporting an exemption for a particular class of works. Therefore, the initial comment period in this rulemaking specifically seeks the identification of this information from proponents of exemptions. First, the commenter should identify the particular class of works that is being proposed as an exemption, followed by a summary of the argument for the exemption. The commenter should then specify the facts and evidence providing a basis for this exemption and any legal arguments in support of the

exemption. Finally, the commenter may include in the comment any additional information or documentation which supports the commenter's position.

If a commenter proposes that more than one class of works be exempted, each individual class proposed should be numbered and followed by a summary of the argument for that proposed class and the factual support and legal arguments in support of that class. This format of class/summary/facts/argument should be sequentially followed for each class of work proposed as necessary.

As discussed above, the best evidence in support of an exemption would consist of concrete examples or cases of specific instances in which the prohibition on circumvention of technological measures controlling access has had or is likely to have an adverse effect on noninfringing uses. It would also be useful for the commenter to quantify the adverse effects in order to explain the scope of the problem, e.g., evidence of widespread or substantial impact through data or supplementary material.

In the reply comments, persons who oppose or support any exemptions proposed in the initial comments will have the opportunity to respond to the proposals made in the initial comments and to provide factual information and legal argument addressing whether a proposed exemption should be adopted. Since the reply comments are intended to be responsive to the initial comments, reply commenters must identify what proposed class they are responding to, whether in opposition, support, amplification or correction. As with initial comments, reply comments should first identify the proposed class, provide a summary of the argument, and then provide the factual and/or legal support for their argument. This format of class/summary/facts and/or legal argument should be repeated for each reply to a particular class of work proposed.

The Copyright Office intends to place the comments and reply comments that are submitted in this proceeding on its website (http://www.copyright.gov/1201). Regardless of the mode of submission, all comments must, at a minimum, contain the legal name of the submitter and the entity on whose behalf the comment was submitted, if any. If persons do not wish to have their address, telephone number, or email address publicly displayed on the Office's website, the comment itself should not include such information, but should only include the name of the commenter. The Office prefers that comments and reply comments be submitted in electronic form and strongly encourages commenters to submit their comments electronically. However, the Office recognizes that it must provide a means of delivery for persons who are unable to submit their comments through the Office's website or to deliver their comments in person. Therefore, comments may also be delivered through the United States Postal Service, addressed to the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024-0400. Because private carriers such as Airborne Express, DHL Worldwide Express, Federal Express, and United Parcel Service cannot deliver to post office boxes or directly to the office of the General Counsel, commenters are cautioned not to use such services to deliver their comments. Moreover, due to continuing mail delays at the Library of Congress, submission by means of the United States Postal Service is strongly discouraged and the submitter assumes the risk that the comment will not be received at the Copyright Office by the due date. Comments submitted by means of the United States Postal Service must be physically received by an employee of the General Counsel's Office of the Copyright Office by the applicable deadline to be considered. Commenters who use the postal service should consider using Express Mail. Electronic filing or hand-delivery will help insure timely receipt of comments by the Office. Electronic comments

successfully submitted through the Office's website will generate a confirmation receipt to the submitter and submitters hand-delivering comments may request a date stamp on an extra copy provided by the submitter.

*If submitted through the Copyright Office's website:* The Copyright Office's website will contain a submission page at: http://www.copyright.gov/1201/comment_forms. Approximately thirty days prior to each applicable deadline (see DATES), a form will be activated on the Copyright Office website allowing information to be entered into the required fields, including the name of the person making the submission, his or her title, organization, mailing address, telephone number, and email address. For initial comments, there will be two additional fields required: 1) the proposed class or classes of copyrighted work(s) to be exempted, and 2) a brief summary of the argument(s). The comment or reply comment itself must be sent as an attachment, and must be in a single file in either Adobe Portable Document File (PDF) format (preferred), in Microsoft Word Version 2000 or earlier, or in WordPerfect 9 or earlier, or in ASCII text. There will be a browse button on the form that will allow submitters to attach the comment file to the form and then to submit the completed form to the Office. The personal information entered in the required fields will not be publicly posted on the website, but the Office intends to post on its website the proposed class and the summary of the argument, as well as the entire comment. Only the commenter's name (and, if applicable, the entity on whose behalf the comment is submitted) is required on the comment document itself and a commenter who does not want other personal information posted on the Office's website should avoid including other private information on the comment itself. Except in exceptional circumstances, changes to the submitted comment will not be allowed and it will become a part of the public record of this rulemaking.

*If by means of the United States Postal Service or hand delivery*: Send, to the appropriate address listed above, two copies, each on a 3.5-inch write-protected diskette or CD-ROM, labeled with the name of the person making the submission and the entity on whose behalf the comment was submitted, if any. The document itself must be in a single file in either Adobe Portable Document File (PDF) format (preferred), or in Microsoft Word Version 2000 or earlier, in WordPerfect Version 9 or earlier, or in ASCII text. If the comment is hand delivered or mailed to the Office and the submitter does not wish to have the address, telephone number, or email address publicly displayed on the Office's website, the comment should not include such information on the document itself, but only the name and affiliation, if any, of the commenter. In that case, a cover letter should be included that contains the commenter's address, telephone number, email address, and for initial comments, the proposed class of copyrighted work to be exempted and another field for a brief summary of the argument.

Anyone who is unable to submit a comment in electronic form (on the website as an attachment or by means of hand delivery or the United States Postal Service on disk or CD-ROM) should submit an original and fifteen paper copies by hand or by means of the United States Postal Service to the appropriate address listed above. It may not be feasible for the Office to place these comments on its website.

*General Requirements for all submissions:* All submissions (in either electronic or non-electronic form delivered through the website, by means of hand delivery or the United States Postal Service) must contain on the comment itself, the name of the person making the submission and, if applicable, the entity on whose behalf the comment is submitted. The mailing address, telephone number, telefax number, if any, and email address need not be included on the comment

itself, but must be included in some form, e.g., on the website form or in a cover letter, with the submission. All submissions must also include the class/summary/factual and/or legal argument format in the comment itself for each class of work proposed or for each reply to a proposal. Initial comments and reply comments will be accepted for a 30-day period in each round, and a form will be placed on the Copyright Office website at least 30 days prior to the deadline for submission. Initial comments will be accepted from November 19, 2002, until December 18, 2002, at 5:00 P.M. Eastern Standard Time, at which time the submission form will be removed from the website. Reply comments will be accepted from January 21, 2003, until February 19, 2003, at 5:00 P.M. Eastern Standard Time.

**4. Hearings and Further Comments**

The Register intends to hold hearings in this rulemaking in the spring of 2003. Following these hearings, the Register will make a determination as to whether there is a need for additional written comments in the form of post-hearing comments specifically addressing matters raised in the record of this proceeding. Details on hearings and any post-hearing comments will be announced at a future date.

In order to provide flexibility in this proceeding to take into account unforeseen developments that may occur and that would significantly affect the Register's recommendation, an opportunity to petition the Register for consideration of new information will be made available after the deadlines specified. A petition, including proposed new classes of works to be exempted, must be in writing and must set forth the reasons why the information could not have been made available earlier and why it should be considered by the Register after the deadline. A petition must also set forth the proposed class of works to be exempted, a summary of the argument, the

factual basis for such an exemption and the legal argument supporting such an exemption. Fifteen copies of the petition must be hand-delivered to the Office of the General Counsel of the Copyright Office at the address listed above. The Register will make a determination whether to accept such a petition based on the stage of the rulemaking process at which the request is made and the merits of the petition. If a petition is accepted, the Register will announce deadlines for comments in response to the petition.

**Dated:** October 4, 2002

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Marybeth Peters,
Register of Copyrights.

Approved by:

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James H. Billington,
The Librarian of Congress.